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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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Arizona Corporation Commission

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GARY PIERCE, Chairman  
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PAUL NEWMAN  
BRENDA BURNS

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AZ CORP COMMISSION  
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*[Signature]*

IN THE MATTER OF THE APPLICATION OF  
MICHAEL W. SCHULTZ AND PAMELA J.  
SCHULTZ DBA RINCON CREEK WATER  
COMPANY, FOR APPROVAL OF SALE OF  
ASSETS AND TRANSFER CERTIFICATE OF  
CONVENIENCE AND NECESSITY.

DOCKET NO. W-03783A-10-0172

**PROCEDURAL ORDER**

**BY THE COMMISSION:**

On May 3, 2010, Michael W. Schultz and Pamela J. Schultz d/b/a Rincon Creek Water Company ("Rincon Creek"), filed with the Arizona Corporation Commission ("Commission") an application for approval to sell its water system assets and transfer its Certificate of Convenience and Necessity to William Shirley and Gretchen Shirley ("Transferees" and, together with Rincon Creek, the "Applicants").

On December 11, 2010, a hearing was held on the application.

During the hearing, the witness for Rincon Creek, Michael Schultz, testified that he does not charge Rincon Creek's four customers for water.<sup>1</sup> The witness for the Transferees, William Shirley, testified that he did not plan to charge the customers for water when the Transferees assumed ownership of Rincon Creek,<sup>2</sup> and that he "could find no requirement that revenue actually had to be collected."<sup>3</sup> Mr. Shirley also testified that it is his understanding that Rincon Creek's original owner, Gilbert Acosta, never charged the customers for water and that the customers believe it is their right not to be charged for water.<sup>4</sup> Mr. Shirley stated that he had talked to an attorney about an adjudication not a public service corporation, but Mr. Shirley expressed concern about loss of water

<sup>1</sup> Hearing Transcript at page 10. ("Tr. at \_\_\_")

<sup>2</sup> Tr. at 23.

<sup>3</sup> Tr. at 19.

<sup>4</sup> Tr. at 50-51.

1 rights.<sup>5</sup>

2 At hearing, the Commission's Utility's Division Staff ("Staff") provided an exhibit  
3 demonstrating that Rincon Creek's current rates were approved by the Commission in Decision No.  
4 31637 (June 22, 1959). The Decision stated: "WHEREFORE, IT IS ORDERED that the rates and  
5 charges which are hereby approved and which shall be in full force and effect are as follows:..."<sup>6</sup>  
6 Staff's witness, Kiana Sears, testified, "my understanding with the discussion with the Director's  
7 office regarding this, that a company must charge the approved rates. The decision actually stipulates  
8 these are the rates that must be charged."<sup>7</sup> Ms. Sears also testified that Staff considers that the  
9 Company has been out of compliance for 50 years for failing to charge customers for water service.<sup>8</sup>

10 At the conclusion of the hearing, parties were advised that legal briefs would possibly be  
11 required in the matter, and the record was held open pending consideration by the Administrative  
12 Law Judge of the legal issues in this matter. After consideration and review, it is reasonable that the  
13 parties should file legal briefs addressing certain issues.

14 IT IS THEREFORE ORDERED that the parties should file legal briefs addressing the  
15 following issues:

- 16
- 17 1) The parties' shall address the question whether Rincon Creek is required to charge  
18 customers for water service. The parties should consider any difference between in  
19 the law as it was when the Decision was issued and what the law is today, if any. The  
parties must attach to their brief copies of the legal authority cited in support of their  
position.
  - 20 2) Regarding Staff's testimony that Rincon Creek is in violation of Decision No. 31637  
21 for not charging customers for service, the parties should address whether, if it is  
22 found that Rincon Creek is in violation of that Decision, any action should be taken  
against Rincon Creek for this violation.
  - 23 3) The parties should also address whether it is possible that the matter might be  
24 addressed as an adjudication not a public utility pursuant to Commission Decision No.  
55568 (May 7, 1987).

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27 <sup>5</sup> Tr. at 51-52.

<sup>6</sup> Hearing Exhibit S-2.

<sup>7</sup> Tr. at 86.

28 <sup>8</sup> *Id.*

1 IT IS FURTHER ORDERED that the Applicants and Staff shall file their Opening Briefs  
2 no later than September 16, 2011.

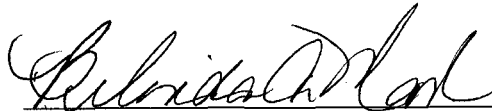
3 IT IS FURTHER ORDERED that the Applicants and Staff shall file their Reply Briefs no  
4 later than October 7, 2011.

5 IT IS FURTHER ORDERED that, after review of the parties' respective briefs, the  
6 Administrative Law Judge reserves the right to set the matter for oral argument, if deemed necessary.

7 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
8 Communications) applies to this proceeding and shall remain in effect until the Commission's  
9 Decision in this matter is final and non-appealable.

10 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
11 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
12 hearing.

13 Dated this 17th day of August, 2011.

14  
15   
16 BELINDA A. MARTIN  
17 ADMINISTRATIVE LAW JUDGE

18 Copies of the foregoing mailed/delivered  
19 this 17th day of August, 2011, to:


20 Michael W. Schultz  
21 RINCON CREEK WATER COMPANY  
22 1102 North Anita Avenue  
Tucson, AZ 85705

23 William Shirley  
24 14545 East Rincon Creek Ranch Road  
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25 Janice Alward, Chief Counsel  
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27 1200 West Washington Street  
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28 By:

  
Belinda A. Martin